ultimate owner of the stock, but only the owner immediately above a pure nominee holder. So long as that entity or individual had provided a U.S. address to a nominee holder, Verizon Wireless counted that entity as wholly U.S. owned and controlled, even if the entity was a U.S. subsidiary of a foreign corporation or a foreign sovereign wealth fund with an office in the U.S., as a number of such funds have. The Commission, in contrast, always previously required that assessments of compliance with Section 310(b)(4) foreign ownership restrictions look all the way up the chain of ownership to assess the citizenship of the ultimate beneficial owners, and not just the citizenship of the first level non-nominee holder, which could be, for example, a U.S. corporation owned and controlled by a foreign entity or a foreign government.[22]

Here, Verizon Wireless has capitalized heavily on the ambiguity of the terms "beneficial owner" and "beneficial ownership." In common parlance, these terms can mean the first level holder immediately below a pure nominee, but that is never what the Commission has meant in requiring an assessment of foreign beneficial ownership and voting rights. The Commission, as CAPCC has demonstrated, has required applicants to consider direct and indirect foreign ownership of its shares. Verizon Wireless, in referring to the registered address of the "beneficial owner" (singular) of a share, has ignored direct and indirect ownership or control of a "beneficial owner" by foreign persons or governments.

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nominee holders by those stockholders holding their interests through nominees (which Verizon Wireless refers to as "beneficial owners").

[22] Thus, under present law, the Commission considers "all relevant ownership interests up the vertical chain including 'even small investments in publicly traded securities.'" *See Foreign Ownership Guidelines*, International Bureau, DA 04-3610, 19 FCC Rcd 22612, 22625 (rel. November 17, 2004) [hereinafter "*Foreign Ownership Guidelines*"], *citing Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Docket Nos. IB 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23941 (rel. Nov. 26, 1997). The Commission has taken the position that these standards apply "even when the alien's ownership interest is non-

As demonstrated below, if the Commission finds Verizon Wireless's Section 310(b)(4) showing adequate (1) it cannot apply those standards just to Verizon Wireless, but must allow all applicants in services subject to Section 310(b)(4), including new entrants and socially disadvantaged businesses, to use the same "registered address" standard to demonstrate compliance with Section 310(b)(4); and (2) in doing so, the Commission necessarily will alter substantially its existing precedent on demonstration of compliance with Section 310(b)(4). As CAPCC previously stated, it would have no objection to a Commission decision to adopt a less restrictive interpretation of Section 310(b)(4) that would apply to all applicants. CAPCC strongly objects, however, to special favorable treatment for a behemoth like Verizon Wireless when the Commission denies those benefits to new entrants and socially disadvantaged businesses.

A. Acceptance of Verizon Wireless's Position Means That the Commission Must Accept the "Registered Address" Approach for Section 310(b)(4) Showings for All Applicants.

By failing to respond in any substantive way to CAPCC's analysis of Section 310(b)(4) and stating only that the FCC has "already ruled on the issue," Verizon Wireless seeks to divert the Commission's attention from this fact: If the Commission accepts Verizon Wireless's position, it cannot avoid applying the same standard to all other applicants subject to Section 310(b)(4).

Verizon Wireless has given the Commission no basis for limiting its "registered address" presumption to Verizon Wireless or similarly-sized companies. In presenting its methodology as an alternative to the sample survey that the Commission's policies normally require for companies with widely held shares, Verizon Wireless states only that its partners have a large

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influential in nature." *Foreign Ownership Guidelines*, at 22625 n.29 (*citing Wilmer & Scheiner II*, Memorandum Opinion and Order, 1 FCC Rcd 12, 13 (rel. Oct. 9, 1986).

number of shares and its method is "more likely to yield accurate citizenship information than a citizenship survey of only a small portion of shares." In the *Verizon-RCC Order*,[23] the Commission, advancing additional arguments that Verizon Wireless appears neither to have made nor supported in the public record, premised its acceptance of the methodology on supposed "special circumstances," but mentioned only two: (1) both Verizon Wireless partners have a large number of shares and it would be difficult to trace the direct or indirect foreign ownership of the beneficial owners themselves and (2) a survey would be "difficult and costly," so that the benefit of the survey outweighed the burden. This rationale does not distinguish Verizon Wireless's situation from that of any new entrant or socially disadvantaged business seeking to ascertain the foreign ownership and control of potential investors.

First, as CAPCC has demonstrated, the number of outstanding shares that an entity may have is entirely irrelevant to assessing the burden of a sample survey. The sample size required for a statistically valid random sample survey does not vary linearly with the size of the population to be sampled. Survey research firms regularly conduct statistically valid samples of the entire United States on a wide range of variables with a randomly selected survey group of a few hundred. The number of outstanding shareholders in its partners, therefore, does not distinguish Verizon Wireless from any other applicant faced with the need to ascertain the level of foreign ownership and control in of a number of potential investors and owners with multilevel ownership structures.[24]

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[23] *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation*, WT Docket No. 07-208, Memorandum Order and Declaratory Ruling, 23 FCC Rcd 12463, 12482-83 (rel. Aug. 1, 2008), *reconsideration pending*.

[24] Using a valid random sample of its shares outstanding, Verizon Wireless thus could have analyzed the ownership and control of those sample shares in the same depth that the Commission requires for its smaller would-be competitors and for SDBs. Verizon Wireless then would have faced the same risk as those smaller competitors and SDBs that ownership information or insulation status for some investors would be unavailable or denied to it, or that

Second, the Commission consistently has assessed "burdensomeness" in light of the resources of the complaining party. If ascertaining the direct and indirect ownership of even a small random sample of its immediate shareholders is too burdensome a task for even a leviathan like Verizon Wireless to undertake, then that burden certainly is too great to impose on any other party, particularly new entrants and socially disadvantaged businesses. As the Commission has previously held, Verizon Wireless faces an extraordinarily high threshold in establishing that any regulatory obligation is "unduly burdensome" to it. In an order establishing requirements for reporting of disruptions to communications, for example, the Commission stated:

> Thus, for example, we greatly doubt that the number of outage reports to be filed by Verizon will rise by a factor of 20, and even if it did, we doubt that Verizon would need to hire an additional five employees to file a little over one outage report a day. **But even if it were to do so, we would not consider this to be a significant burden because of Verizon's size and large, multifaceted operations in more than 35 states, commonwealths and territories.** In summary, we agree with the Staff of the Kansas Corporation Commission and with the Connecticut Department of Public Utility Control that our revised rule will not impose requirements that are unduly burdensome.[25]

In fairness to Verizon Wireless, however, Verizon Wireless never seriously argued that complying with the Commission's settled policies on citizenship determination would strain its capacities. Nevertheless, the Commission, which strictly and consistently applies those standards to new entrants and socially disadvantaged businesses in broadcasting and telecommunications, found its normal requirements too burdensome for Verizon Wireless. If

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some investors with "registered addresses" in the United States or a WTO member nation would turn out to be owned or controlled in whole or in part in a way adverse to the grant of a Section 310(b)(4) determination.

[25] *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 16830, 16914 (rel. Aug. 19, 2004) (emphasis supplied).

that decision stands, the Commission must apply the same standards to all applicants subject to Section 310(b)(4).[26]

B. Acceptance of Verizon Wireless's Position Will Alter Substantially the Commission's Existing Precedent on Demonstrating Compliance with Section 310(b)(4).

In declining to respond substantively to CAPCC's analysis, Verizon Wireless has failed to apprise the Commission of the effect of adopting a special statutory interpretation for Verizon Wireless which, as shown above, necessarily would extend to all applicants subject to Section 310(b)(4).

First, the Commission no longer would have any basis ever to require public companies and other companies to perform random sample surveys. If a random sample survey – previously the Commission's preferred method for an applicant with widely held stock to assess citizenship qualifications – imposes undue burdens on Verizon Wireless, it necessarily imposes undue burdens on every other applicant and no longer can be reasonably required.

Second, any applicant could conclusively presume the citizenship of its stockholders or investors based upon the registered address of any stockholder that is not a pure nominee. The Commission's prior pronouncements on the impermissibility of reliance on shareholder addresses to ascertain citizenship would be overturned and no longer of any effect. Verizon Wireless sought to distinguish that consistent line of precedent by pleading that its contractor

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[26] *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (when the Commission makes contemporaneous decisions according different treatment to apparently similarly situated applicants, it must explain why it has treated the applicants differently); *Green Country Mobilephone, Inc. v. FCC*, 765 F.2d 235 (D.C. Cir. 1985) ("We reverse the Commission not because the strict rule it applied is inherently invalid, but rather because the Commission has invoked the rule inconsistently"); *New Orleans Channel 20, Inc.* v. FCC, 830 F2d 361, 366 (D.C. Cir. 1987) (noting the "importance of treating parties alike . . . when the agency vacillates without reason in its application of a statute or the implementing regulations"); *McElroy Elec. Corp. v. FCC*, 990 F.2d 1351, 1365 (1993) (reminding the Commission "of the importance of treating similarly situated parties alike or providing an adequate justification for disparate treatment").

used the registered address of the "beneficial owner" of the share and not just a "shareholder address" to presume citizenship. It is clear, however, that, by "beneficial owner," Verizon Wireless means only a stockholder that is not a pure nominee. Thus, for shareholders that hold their stock in registered name and not through a nominee, "registered address of beneficial owner" and "registered address of shareholder" mean exactly the same in the lexicon that Verizon Wireless seeks to foist on the Commission.

Third, the Commission would have sanctioned and approved a new "don't ask, don't tell" regime for dealing with foreign ownership under Section 310(b)(4). In the *Verizon-Alltel Order*, the Commission did four things: (1) approved Verizon Wireless's presumption of shareholder citizenship from the registered addresses shareholders gave their nominees, (2) stated that Verizon Wireless nevertheless must take into account the foreign ownership of which it has actual knowledge, (3) imposed no obligation on Verizon Wireless to seek any such knowledge; and (4) commended Verizon Wireless for adopting procedures for ascertaining citizenship from "registered addresses" through a third party under a double-blind approach that ensures Verizon Wireless can never, even inadvertently, acquire any knowledge of the citizenship of a stockholder inconsistent with the stockholder's registered address. This new policy places a premium on the ascertainment of foreign ownership by third parties using proprietary processes and ensures that neither the applicant nor the Commission will ever know what relationship, if any, a U.S." registered address" has to the actual percentage of direct and indirect foreign ownership and control in a stockholder. The Commission effectively has made a U.S. mailing address that a shareholder gives to its nominee, an attribute that a shareholder may change at will, conclusive evidence of wholly U.S. ownership and control and has made sure neither the Commission nor other parties can question that presumption.

Fourth, the Commission would remove any rationale for requiring applicants to inquire into foreign ownership or control at any level beyond the citizenship of the entity that directly invests in its shares. Even that would be a more far-reaching analysis of foreign ownership than the Commission required of Verizon Wireless, which relied upon just the registered addresses of its shareholders for all of the shareholders of each of its partners and was not required to assess whether a shareholder that gave a U.S. mailing address was organized under the laws of a foreign country, much less whether it might be the subsidiary of a foreign corporation or sovereign wealth fund.

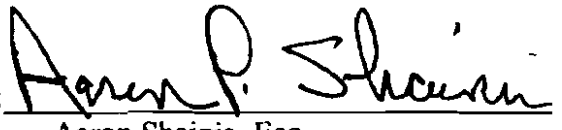
The purpose of the foreign ownership restrictions in Section 310(b)(4) and the requirement to ascertain foreign ownership is to promote national security by avoiding undue foreign influence over U.S. communications by foreign persons or, in the case of telecommunications, foreign nationals not subject to treaty obligations with the United States. Effectively exempting the nation's largest carrier from those requirements while enforcing them vigorously against new entrants and SDBs whose operations are highly unlikely to have any national security implications turns that policy on its head and converts the process into the protection of Verizon Wireless against competition rather than the protection of the public interest.

IV. Conclusion

For all these reasons, the Commission should deny the above-captioned applications until Verizon Wireless first conducts a divestiture process that provides appropriate, meaningful consideration for potential SDB buyers of these assets and second, demonstrates actual compliance with Section 310(b)(4) of the Communications Act.

Respectfully submitted,

CHATHAM AVALON PARK COMMUNITY COUNCIL

By: 

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August 11, 2009

CERTIFICATE OF SERVICE

I, Aaron Shainis, do hereby certify that on this 27th day of August, 2009, copies of the foregoing REPLY OF CHATHAM AVALON PARK COMMUNITY COUNCIL TO JOINT OPPOSITION OF ATLANTIC TELE-NETWORK AND VERIZON WIRELESS were served as follows:

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